MC(N) 746/2004
B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

It appears from the record that the respondent No.3 had received the notice from this Court. Even though the notices on respondent Nos. 1 and 2 were issued on 28.07.2010, those are neither returned unserved nor their AD Cards have been received by the Registry. In view of this, the notices on the respondent Nos. 1 and 2 be deemed to have been served by operation of the provision of Order V Rule 9(5) of CPC.

2. Heard Mr. S.S. Sarma, learned senior counsel appearing for the appellant, National Insurance Company Ltd. There is no representation from the respondents.

3. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 27.11.2002 as passed by the Motor Accident Claims Tribunal, Goalpara, in MAC Case No.65/1996.

4. The Tribunal has awarded only a sum of Rs.23,000/- along with interest @ 9% from the date of filing of the written statement i.e. 12.08.1996.

The findings as returned by the Tribunal as regards the accident, involvement of the offending vehicle and its coverage by the appellant and receipt of the injuries by the claimant-respondent are not in dispute in this appeal and accordingly those stand affirmed by this Court.

5. The appeal is based on the solitary question, whether the appellant has liability for making payment of the awarded sum as directed by the Tribunal since the vehicle was over-crowded, meaning thereby beyond the capacity as approved by the M.V. Act and as such there is serious breach of the permit under which it operated at the relevant point of time.

6. On a cursory glance of the impugned judgment and the evidence as recorded by the Tribunal, it appears that the Insurance Company did not bring any evidence as regards the overcrowding.

In view of this, the challenge as advanced cannot be sustained for lack of evidence.

7. This appeal does not merit any further consideration and accordingly, the same is dismissed.

8. The appellant, National Insurance Company shall pay the entire award in the Tribunal within a period of 2(two) months from today with interest on deducting the sum, if any already paid. On such deposit, the claimant-respondent would be at liberty to withdraw the deposited amount from the Tribunal on proper identification.

9. The statutory deposit be returned to the appellant. There shall be no order as to costs in the fact and circumstances of the case.

Send down the LCRs forthwith.